

UNCLASSIFIED

K352

ACTION EUR-00

INFO LOG-00 NP-00 AID-00 AMAD-00 CIAE-00 INL-00 DODE-00
DS-00 EAP-00 FBIE-00 VC-00 FRB-00 H-00 TEDE-00
INR-00 VCE-00 DCP-00 NRC-00 NSAE-00 OES-00 NIMA-00
P-00 SCT-00 FMPC-00 SP-00 IRM-00 SSO-00 SS-00
ASDS-00 BBG-00 R-00 EPAE-00 IIP-00 DSCC-00 PRM-00
G-00 NFAT-00 SAS-00 SWCI-00 /000W

-----0EB812 051633Z /38

P 051546Z JUL 05

FM AMEMBASSY MADRID

TO SECSTATE WASHDC PRIORITY 6933

DEPT OF JUSTICE WASHDC PRIORITY

DEPT OF TREASURY WASHDC PRIORITY

INFO EU MEMBER STATES COLLECTIVE PRIORITY

RELEASED IN PART
B1, 1.4(B), 1.4(D)

C O N F I D E N T I A L MADRID 002537

DEPARTMENT FOR EUR/WE AND S/CT

DOJ FOR DONALD ASHLEY AND GREG SOFER

E.O. 12958: DECL: 06/27/2015

TAGS: PTER, PREL, SP

SUBJECT: BARAKAT YARKAS TERRORISM TRIAL: PROSECUTION BLAMES

USG FOR LACK OF ACCESS TO BINALSHIBH

REF: A. A) MADRID 2082

B. B) MADRID 2223

Classified By: DCM Bob Manzanarez; reasons 1.4 (B) and (D)

1. (C) Summary. Embassy officials met with the Chief Prosecutor of Spain's National Court Eduardo Fungarino on July 1 to express concern regarding press reports quoting the lead prosecutor in the Barakat Yarkas terrorism trial complaining about the lack of access to USG detainee Ramzi Binalshibh. Emboffs reminded Fungarino that such statements were contrary to assurances by Fungarino and the prosecutor in question to a visiting USDOJ team in May that Binalshibh's testimony was not vital to their case and that Spanish officials would not criticize the lack of access to Binalshibh.

B1

We hope, but cannot be certain, that this meeting with Fungarino will dissuade the prosecutor from blaming the USG should he fail to convict Barakat Yarkas of

UNCLASSIFIED

UNCLASSIFIED

murder when the trial comes to a close in the next several weeks. End Summary.

2. (C) In a June 25 story in the International Herald Tribune, Pedro Rubira, lead prosecutor in the ongoing trial of al-Qa'ida cell leader Imad Eddin Barakat Yarkas and 23 others, is quoted as criticizing the lack of access to USG detainee Ramzi Binalshibh. In the press story, Rubira allegedly claims that Binalshibh's testimony was crucial in order for the prosecution to be able to prove that Barakat Yarkas and co-defendant Driss Chebli were guilty of murder charges for having organized meetings in Spain for September 11 hijacker Mohamed Atta in July 2001. Trial observers say the three-judge panel in the case has seemed skeptical of the murder charges since the prosecution has not demonstrated convincingly that Barakat Yarkas or Chebli were present at the July 2001 meetings or knew of Atta's plans to carry out attacks in the U.S. Rubira is quoted by Herald Tribune saying that "an interview with Binalshibh would change everything" and turn the case in favor of the prosecution. He is also reported as adding that the USG had otherwise cooperated closely in the case, but that he "could not wait much longer (to interview Binalshibh)" and might have to release one of the suspects. Rubira said he had last requested access to Binalshibh three months ago, but had yet to receive an answer from the USG.

3. (U) Rubira followed this on June 27 during his summation of the case, urging the judges to convict the defendants and sentence them to the maximum penalties in order to demonstrate that the fight against terrorism "does not require wars or detention centers," alluding to USG military actions and to the detention center in Guantanamo. According to Spanish daily "El Mundo," Rubira "defended the European model (in the fight against terrorism) compared to the U.S. model," and said what was needed were "trials like this which strengthen the rule of law." A June 28 editorial in El Mundo criticized Rubira for "politicizing" the Barakat Yarkas case in order to distract attention from the prosecution's lack of evidence to substantiate murder charges against Yarkas and Chebli.

4. (C) Rubira's statements to the Herald Tribune directly contradict his assertion in mid-May to a visiting USDOJ team

[REDACTED] (REF A). Moreover, despite Rubira's claim to have requested access to Binalshibh three months ago, the Embassy is not aware of any such Mutual Legal Assistance (MLAT) request having been formally submitted by

B1

UNCLASSIFIED

UNCLASSIFIED

Spanish authorities.

5. (C) Embassy legal adviser shared a copy of the Herald Tribune story with Rubira's supervisor and Chief Prosecutor for Spain's National Court Eduardo Fungarino. [REDACTED]

B1

6. (C) Fungarino met with poloff and Embassy legal adviser on July 1 to provide a readout of his discussions with Rubira on this issue. [REDACTED]

B1

7. (C) Poloff and legal adviser told Fungarino that it was unfortunate that Rubira's discussion with the journalist had made it seem that the USG could be responsible for the failure of Rubira's case against Barakat Yarkas. It was especially frustrating for the USG since the Embassy and DOJ had discussed this issue at length with Rubira in May and had been assured both that Binalshibh's testimony was not vital to the Spanish case and that prosecutors would not blame the USG for lack of access to Binalshibh. This episode undermined the trust and confidence necessary for the success of the newly-launched Bilateral Counterterrorism Experts Working Group, which the USG sees as an important vehicle for deepening counterterrorism cooperation. Poloff also clarified that the USG had no record of a formal Spanish request under the MLAT for access to Binalshibh, nor did we recommend that such an MLAT request be made at such a late date in the trial. [REDACTED]

B1

UNCLASSIFIED

UNCLASSIFIED

//COMMENT//

8. (C) Our sense is that Fungarino was embarrassed by Rubira's interview, but felt obligated to support his subordinate. We hope, but cannot be sure, that this expression of the USG's displeasure with Rubira's statements will restrain Rubira from blaming the USG should the court absolve Barakat Yarkas of murder charges. At a minimum, Fungarino understands the sensitivity of this issue for the USG and our strong desire that Rubira avoid such unhelpful statements in the future.

AGUIRRE

NNNN

UNCLASSIFIED